

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CARMEN AND DUREY CADWELL**

**Plaintiffs,**

**v.**

**FIRST COMMUNITY INSURANCE  
COMPANY**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**No. 4:16-CV-02248**

**DEFENDANT FIRST COMMUNITY INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant First Community Insurance Company (referred to herein as "FCIC" or "Defendant") files this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

**I.  
FACTUAL AND PROCEDURAL BACKGROUND**

1. On June 1, 2016, Plaintiffs Carmen and Durey Cadwell filed their Original Petition in the matter styled *Carmen and Durey Cadwell vs. First Community Insurance Company*, Cause No. 2016-36033, in the 129th Judicial District Court of Harris County, Texas. The lawsuit arises from a claim Plaintiffs made for storm damages to their home under an insurance policy issued by FCIC.

2. Plaintiffs served Defendant FCIC with a copy of the Original Petition on June 28, 2016.

3. Defendant FCIC filed its Original Answer to Plaintiff's Original Petition on July 25, 2016.

4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. §1446(a). A copy of this Notice is also concurrently being filed with the state court and served upon the Plaintiffs. As required by 28 U.S.C. § 1446(a), and Rule 81.1 of the Local Rules for the United States District Court of the Southern District of Texas, being filed simultaneously with the filing of this Notice of Removal is an Index of State Court Documents, which is attached hereto as Exhibit "A." A copy of the Docket Sheet is attached hereto as Exhibit "1." A copy of the Civil Case Information Sheet is attached hereto as Exhibit "2." A copy of Plaintiffs' Original Petition is attached hereto as Exhibit "3." A copy of Defendant FCIC's Original Answer to Plaintiffs' Original Petition is attached hereto as "4." Also included with this filing is a Civil Cover Sheet.

5. Defendant FCIC files this Notice of Removal within 30 days of receiving Plaintiffs' pleading. *See* 28 U.S.C. §1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

6. Venue is proper in this Court under 28 U.S.C. §1441(a) because this district and division embrace Harris County, Texas, the place where the removed action has been pending and where the incident giving rise to this lawsuit took place.

## **II.**

### **BASIS FOR REMOVAL**

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§1332(a), 1441(a) and 1446.

**A. The Parties Are Of Diverse Citizenship**

8. Plaintiffs are, and were at the time the lawsuit was filed, residents of Harris County, Texas, and therefore citizens of the State of Texas. *See* Pls' Original Pet. ¶ 3, attached hereto as Exhibit "2."

9. Defendant FCIC is incorporated under the laws of the state of Florida with its principal place of business in Saint Petersburg, Florida. Therefore, Defendant FCIC is a citizen and resident of the state of Florida for diversity purposes.

10. Because Plaintiffs are citizens of Texas, and Defendant FCIC is a citizen of Florida complete diversity of citizenship exists among the parties.

**B. The Amount in Controversy Exceeds \$75,000.00**

11. This is a civil action in which the amount in controversy exceeds \$75,000.00. In determining the amount in controversy, the court may consider "policy limits... penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at \* 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff's case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int'l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the

presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

12. Plaintiffs allege a variety of claims arising from damage to their property located at 5439 Melody Park, Houston, Harris County Texas. Plaintiffs seek damages of “over \$100,000 but not more than \$200,000”. As such, Plaintiffs’ alleged damages exceed \$75,000.00.

### **Conclusion and Prayer**

All requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. Accordingly, Defendant First Community Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ R. Tate Gorman

R. Tate Gorman

State Bar No. 24032360

Plaza of the Americas

700 N. Pearl Street, Twenty-Fifth Floor

Dallas, TX 75201-2832

Telephone: (214) 871-8248

Fax: (214) 871-8209

E-Mail: [tgorman@thompsoncoe.com](mailto:tgorman@thompsoncoe.com)

And:

Vasilia M Wilkes

State Bar No. 24051452

One Riverway, Suite 1400

Houston, TX 77056

Telephone: (713) 403-8285

Fax: (713) 403-8299

E-Mail: [vwilkes@thompsoncoe.com](mailto:vwilkes@thompsoncoe.com)

**COUNSEL FOR DEFENDANT**

**FIRST COMMUNITY INSURANCE**

**COMPANY**

**CERTIFICATE OF SERVICE**

I certify that on this the 28th day of July, 2016, a copy of this document has been served on Plaintiff's counsel of record via facsimile and/or United States Mail, in accordance with the Rules of Civil Procedure:

/s/ Vasilina M. Wilkes

Vasilina M. Wilkes